IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 1566 of 2005

Between:

Bharti Cellular Limited, Splendid Towers, Begumpet,
Hyderabad rep., by its Manager Legal K.B.S.Sarma.

..... PETITIONER

AND

1 Assistant Commercial Tax Officer, Begumpet Circle,
Hyderabad.
2 Appellate Deputy Commissioner (CT), Panjagutta Division,
Hyderabad.
3 Commercial Tax Officer, Begumpet Circle, Hyderabad.
4 Additional Commissioner (CT) (Legal) Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in the nature of writ of mandamus granting stay of collection of the disputed penalty of Rs.28,61,493/- arising in pursuance of the stay rejection proceedings of the second respondent dated 31-1-2005 read with the notice dated 31-1-2005 issued by the third respondent in seeking to recover the disputed penalty, pending disposal of the appeal before the second respondent or to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.S.KRISHNA MURTHY

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court at the admission stage made the following:

ORDER (Per the Hon'ble Sri Justice MHS Ansari)

Heard learned counsel for the respective parties. For the alleged violation/misuse of C forms for purchase of telecommunication equipments, proceedings were initiated and penalty levied.

It is the case of the respondent authorities that the petitioner dealer purchased telecommunication equipment prior to amendment of C.S.T. Act and also purchased certain material which are neither telecommunication equipment nor are included in the C.S.T. registration certificate of the dealer. A sum of Rs,.28,61,493/- is demanded as penalty computed at the rate of one and half times the tax (Rs.19,07,662/-). Aggrieved thereby, the petitioner preferred an appeal before the 2nd respondent along with an application for stay of collection of the impugned penalty. Stay application was rejected by an order dated 31-01-2005 and simultaneously a demand notice has been issued calling upon the petitioner to pay penalty within three days, failing which, the petitioner will be treated as defaulter and action shall be taken for recovery in accordance with law. Aggrieved thereby, instant Writ Petition is filed questioning the order of rejection of the 2nd respondent, dated
31-01-2005 seeking to recover the disputed penalty pending disposal of the appeal before the 2nd respondent.

Though several contentions have been raised before us questioning the very levy of penalty and reliance has been placed on certain Government orders, we are not inclined to go into the merits of those contentions as those are matters which would require consideration in the appeal pending before the 2nd respondent.

Appeal against the impugned order of levy of penalty is provided under the Act at Section 19. Accordingly, we are of the view that interest of justice would be served if the appeal is disposed of by the 2nd respondent without insisting upon payment of penalty. It is accordingly directed that no further steps shall be

taken pursuant to the demand notice dated 31-01-2005 issued by the 3rd respondent until disposal of the appeal pending before the 2nd respondent herein. Thereafter it shall be open to the respondent authorities to affect recovery depending upon the result of the appeal.

With the directions as above, the Writ Petition accordingly stands disposed of. No order as to costs.

M.H.S.ANSARI, J

Dated: 03-02-2005.

T.CH.SURYA RAO, J

Hsd

Note: Issue Copy on priority basis.

B/o

Hsd

Asst. Registrar

To

1 Assistant Commercial Tax Officer, Begumpet Circle, Hyderabad.
2 Appellate Deputy Commissioner (CT), Panjagutta Division, Hyderabad.
3 Commercial Tax Officer, Begumpet Circle, Hyderabad.
4 Additional Commissioner (CT) (Legal) Hyderabad.

5. 2 C.Cs to G.P. for Commercial Tax, High Court Buildings,

Hyderabad (OUT)

6. 2 C.D.copies.